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MEMORANDUM ENDORSEMENT

Morin v. Fordham University et al
7:21-cv-7909 (NSR)

The Court is in receipt of the attached letter from Defendant Howard Robinson, dated November 11, 2021, seeking leave to file a motion to dismiss the claims against him in Plaintiff's Complaint.

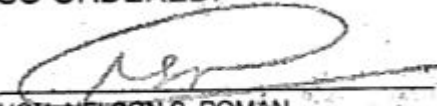
The Court waives the pre-motion conference requirement and grants Defendant Robinson leave to file a motion to dismiss in accordance with the following briefing schedule:

- (1) Defendant Robinson's moving papers are to be served (not filed) on December 18, 2021;
- (2) Plaintiff's opposition papers are to be served (not filed) on January 17, 2022; and
- (3) Defendant Robinson's reply papers are to be served on February 1, 2022.

All motion papers are to be filed by Plaintiff and Defendant Robinson on the reply date, February 1, 2022. Plaintiff and Defendant Robinson are directed to provide Chambers with two physical courtesy copies of their motion papers on the same date they are served on opposing counsel. Plaintiff and Defendant Robinson are further directed to provide the Court with an electronic courtesy copy of the motion papers as they are served per this Court's local emergency civil rules.

The Clerk of Court is respectfully directed to terminate the motion at ECF No. 33.

Dated: November 18, 2021
White Plains, NY

SO ORDERED:

HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE

28 SECOND STREET
TROY, NY 12180
PHONE: (518) 274-5820

200 HARBORSIDE DRIVE, SUITE 300
SCHENECTADY, NY 12305 PHONE:
(518) 783-3843

511 BROADWAY
SARATOGA SPRINGS, NY 12866
PHONE: (518) 584-8886

41 STATE STREET, SUITE 604-05
ALBANY, NY 12207
PHONE: (518) 486-8800

FAX: (518) 274-5875

www.joneshacker.com

November 11, 2021

Honorable Nelson S. Román
United States District Court Judge
Federal Building and United States Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

Re: Andrea Morin v. Fordham University, et al.
Case No. 7:21-cv-07909-NSR

Dear Judge Román,

This firm represents Howard Robinson in the above-referenced action along with Samantha K. Harris of Allen Harris PLLC, whose *pro hac vice* application is forthcoming. Please accept this letter request for a pre-motion conference as required by Section 3.A.ii of your Individual Practices regarding Defendant Robinson's desire to file a motion to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Plaintiff's Complaint sets forth no cognizable federal claims against Howard Robinson, a former Fordham University social work professor whom Plaintiff has alleged sexually harassed her by masturbating during a class he taught over Zoom on September 10, 2020.¹

Plaintiff alleges that Howard Robinson created a "hostile educational environment" pursuant to 42 U.S.C. § 2000e, *et seq.*, otherwise known as Title VII of the Civil Rights Act of 1964. However, Title VII is an employment discrimination statute, and Plaintiff does not allege that she was ever an employee of Fordham University or Howard Robinson. Rather, her Complaint states that "at all times relevant, [she] was a student at Fordham University, enrolled in the Fordham College of Continuing and Professional Studies." (Dkt. No. 1 ¶ 1). Since Plaintiff does not allege she was an employee of Fordham University, she cannot bring an employment discrimination claim. Nor, to counsel's knowledge, has Plaintiff filed a Title VII claim with the EEOC, which is a necessary exhaustion prerequisite for any federal employment discrimination claim. Moreover, since the Second Circuit has held that individual defendants cannot be held personally liable under Title VII, Plaintiff could not bring a Title VII claim against Howard Robinson even if, hypothetically speaking, she was employed by Fordham and simply failed to plead that in her Complaint.

¹ In reality, what Plaintiff witnessed was Robinson – who did not know he could be seen at the time – attempting to suppress an urgent need to urinate as he tried to finish a course-related task while his students were in Zoom "breakout rooms." This is set forth in greater detail in Robinson's Article 78 petition, *In the Matter of Howard Robinson v. Fordham Univ.*, Index No. 812584/2021E (N.Y. Sup. Ct. filed Sept. 17, 2021), against Fordham University arising out of this matter.



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Plaintiff further alleges that Howard Robinson, a professor at a private university, “acted under color of state law” and violated her rights under the Equal Protection Clause by allegedly engaging in sexual harassment. However, Robinson is not a state actor, and Plaintiff has alleged no facts suggesting that Robinson acted in concert with any state actor to deprive her of her constitutional rights, as required to impute state action to a private individual.

Due to ambiguous drafting, it is unclear whether Plaintiff intended to assert her Title IX claim against Fordham alone or also against Howard Robinson. However, to the extent that Plaintiff intended to include Howard Robinson as a defendant in her Title IX claim, that too must fail, since this Court and others have repeatedly held that there is no individual liability under Title IX.

That leaves only Plaintiff’s state-law claim for intentional infliction of emotional distress, over which – in the absence of any viable federal claims against Howard Robinson – this Court should decline to exercise supplemental jurisdiction.

Defense counsel for Robinson contacted Plaintiff’s attorney by telephone on October 26, 2021, to discuss the viability of Plaintiff’s claims against Robinson. Defense counsel requested Plaintiff voluntarily dismiss the federal claims, since they could not survive under well-established federal law. Plaintiff’s counsel declined, however, and Defendant Howard Robinson now seeks to move this Court to dismiss Plaintiff’s claims against him.

Sincerely,

Julie A. Nocciolo, Esq.

E. Stewart Jones Hacker Murphy LLP

Samantha K. Harris, Esq.

Allen Harris PLLC

Pro Hac Vice Application Forthcoming

Attorneys for Defendant Howard Robinson